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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,173	09/10/2003	John N. Lec	NC 95,757	1528

7590 09/09/2004

Naval Research Laboratory
Code 1008.2
4555 Overlook Ave., S.W.
Washington, DC 20375-5320

EXAMINER

TRAN, THANG V

ART UNIT	PAPER NUMBER
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2653

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/662,173	LEE ET AL.	
	Examiner	Art Unit	
	Thang V. Tran	2653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 33 and 34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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The communication filed on 09/08/03 has been considered with the following results:

Summary of Claims

1. Claims 1-32 have been canceled.
2. Newly added claims 33 and 34 are pending in this present application.

Specification

3. The specification is objected to because continuing data related to parent applications of this present application is not provided in a first light of the specification. Appropriate correction is required.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 33 and 34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 7, 9, 11 and 14 of U.S. Patent No. 6,501,724. Although the conflicting claims are not identical, they are not patentably distinct from each other because all limitations as recited in claims 33 and 34 of the present application are included in claims 1, 2, 7, 9, 11 and 14 of U.S. Patent No. 6,501,724 as indicated below.

Claims in the present application

Claims in U.S Patent No. 6,501,724

33

1, 2, 11 or 14

34

7 or 9

6. Claims 33 and 34 are also rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 5, 6 and 8 of U.S. Patent No. 6,700,858. Although the conflicting claims are not identical, they are not patentably distinct from each other because all limitations as recited in claims 33 and 34 of the present application are included in claims 1, 3, 4, 5, 6 and 8 of the U. S. Patent No. 6,700,858 as indicated below.

Claims in the present application

Claims in U.S Patent No. 6,700,858

33

1, 3, 4, 5 or 6

34

8

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Gelbart (US 5,802,034).

Gelbart, according to Fig. 3, shows multi-track optical read/write head comprising all features of the instant claimed invention including: a laser illuminating device (9) illuminating data pits of tracks 1) of an optical disk with an input data modulated beam (beam modulated by

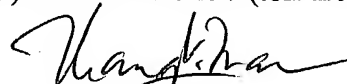
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modulator 3) and an accumulator (detector array 8) for accumulating, in corresponding to tracks, a beam reflected from the optical disk as recited in claim 33 and functional method claim 34.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thang V. Tran whose telephone number is (703) 308-1551. The examiner can normally be reached on M-F 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on 703 305-6137. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thang V. Tran
Primary Examiner
Art Unit 2653